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STATE CONTROL OF CORPORATIONS AND INDUSTRY IN MASSACHUSETTS.

I.

IN our new era of industrialism the people are compelled to look to the state for help. Competition is tending to take a subordinate place, and it can no longer be regarded as the means by which the evils in our producing and distributing systems are to be suppressed. We cannot expect, as did the economist of the past, that the selfish interests of men will so operate against one another as to force competitors in manufacture, trade and transportation to give the public the largest service, the lowest prices, the greatest privileges and the fullest justice. Business strife becomes so drastic in its effects, at times, that it operates against the welfare of all competitors and goes beyond the most exacting requirements of the public good. Combination, instead of competition, is the conspicuous fact in our industrialism to-day. Stimulated partly by the necessity that all or nearly all competitors should survive, rather than that all should perish, and partly by regard for the great and rapidly returning profit which may be extorted by a monopoly, the effort of our producers, our traders and our common carriers is toward the trust, the pool or some other kind of combination. By these it is hoped that competition may be put aside and that prices may be made at least to cover the cost of service or production, and if possible to stand at the maximum which consumers can be forced to pay. That all combinations are maintained for the sake of undue profit, is not admitted; that such is the purpose of some of them, official investigations prove. The development of combination in place of competition has been accompanied by the discovery that monopoly, if properly managed, is often economically advantageous. Under proper management, a railroad, a telegraph or telephone system or

works for the public supply of gas and water should be a monopoly. Indeed, almost the entire distribution of the products of industry might be effected more economically by monopoly than by competition. A village would be better off, economically, with one grocery sufficient for the public service than it is with the dozen or score that it has. One paper manufacturing company with a large product may be better than two or three companies each with a small product. While such facts have been forcing themselves into recognition, the state has been creating corporations with a free hand and has indeed, by general laws, placed the organization of a corporation within the power of any group of citizens, without further reference to the legislature. In this new order of things great evils have sprung up, due to abuse of their privileges and excess of their powers by corporations and by all classes of monopolies. These evils are too well known to be recited here.

Upon the facts thus concisely stated, rests the necessity for some sort of state action toward corporations and industry. A wide range of propositions is open to the theorist. At one extreme is the anarchy which would abolish the state. Next to this is the still existing reliance upon competition ultimately to do away with the evils arising from the abuses of combination; that is to say, we are to stand inertly by and see wealth distributed by extortion, content with reflecting that the procedure may possibly exhaust itself in time. Then there is Herbert Spencer's let-alone theory, which allows the state just enough action to enforce contracts and to maintain the equal liberty of its citizens, with a very narrow conception of liberty. Under this theory the monopoly of a railroad or gas company could not be defended, nor could a trade combination be subjected to regulation. We next pass by one long step to a "school" which would radically remove the source of these evils by substituting public for private ownership. The municipality is to own and operate its gas works, and the state its railroads and telegraphs. If it is necessary that this step should be taken, the ultimate destination is nothing short of full social industrialism. The reasoning which justifies the public acquisition of any of the

natural monopolies must lead eventually to the acquisition of all of them. Nor can it stop here. The trade combination is yet in its infancy and there is reason to believe that, with the strengthening of the spirit of co-operative effort which must go on as our civilization advances, this combination must approach much nearer to a permanent monopoly than it now is. We already have artificial monopolies with much of the power of natural monopoly while they last. They will in the end require substantially the same treatment. If trade combinations are repeatedly broken, they are also repeatedly renewed, and in the present state of popular ignorance regarding their effects, their renewal is the more fearful fact. The general public, it is believed, suffers more from some trade combinations than it does from the private management of railroads, telegraphs and the gas business. If the telegraphs should be owned by the state, so should the coal mines, the paper mills, the sugar and petroleum refineries.

But it may not be necessary to go into social industrialism at all. We should be slow and cautious about surrendering our liberty to the state. The burden of proof certainly rests upon him who would persuade us to do this. We would not have the state forbid all persons to go to Saratoga in order that a gambling house there might be closed for want of gamblers. That would be a great outrage upon liberty. The industrialism of the Peruvians before the Spanish conquest could not produce a millionaire outside of the reigning family, and wealth, such as it was, was distributed among the masses of the people with an evenness that no civilized nation has ever attained; but this result was not worth the great sacrifice of liberty that it cost. In proportion as the suppression of liberty advances, the plane upon which individual effort may act is limited and lowered. The Peruvian, whose industrial state is worthy of more attention than has generally been given to it in connection with this subject, had so little scope for private initiative that his social evolution could proceed only on the plane that had been prescribed for him, and there not freely. The type of his social and industrial institutions was crystallized. The ques-

tion that confronts us is whether we want to crystallize our industrialism at the present stage of its evolution, so that its type shall not be further changeable. Ought we not to wait until the age of co-operative production and distribution shall demonstrate what it can do?

II.

The experience of Massachusetts in this matter points out a field for state action which promises to render further steps toward social industrialism unnecessary. This state is regulating corporations and industry on a large scale and with much success. The results indicate that for the most effective suppression of the evils arising from the improper management of corporations and monopolies, with the least encroachment upon the liberty of the individual, the best means is to be found in the extension and perfection of the system here employed. I refer to various boards of commissioners which the state has created, with large discretionary powers, for the purpose of securing from corporations compliance with legal requirements. There are railroad commissioners, an insurance commissioner, savings-bank commissioners, gas and electric-light commissioners, an inspector of gas meters and illuminating gas, a commissioner of foreign¹ mortgage corporations, a board of arbitration and conciliation, factory and public building inspectors and a commissioner of corporations. Each of these boards acts more or less at discretion and, with the exception of the board of arbitration, has back of it a group of laws to be enforced against corporations. It is the purpose in the pages that follow to review the administration of these state agencies.

Massachusetts is now recognizing and maintaining some of the natural monopolies. The bold stand was taken by the legislature of 1882 that no railroad corporation organized under the general law should be allowed to construct a line until the railroad commissioners should have certified "that public

¹ Foreign, as used in the Massachusetts statutes, means foreign to Massachusetts and not necessarily foreign to the United States

convenience and necessity require the construction of a railroad as proposed." Earlier than that, the monopoly of the gas business was possible, under the law which permitted a gas company to dig up the streets of a town or city only with the permission of the selectmen or of the mayor and aldermen. A law of 1887 regarding gas companies was more explicit and forbade such a company to open the streets for laying pipes in any town or city where another gas company was doing business, except with the consent of the selectmen or of the mayor and aldermen, from whom, however, an appeal might be taken to the gas and electric-light commissioners. A similar law was applied to electric-lighting companies in the same year. The state is thus committed to the principle that natural monopolies should remain such. With the agencies at its service, Massachusetts is no longer afraid of these monopolies.

As to corporations, the first specialized agency of the state to look after their affairs was the board of bank commissioners, established in 1851, but now supplanted by the savings-bank commissioners. The board, as now established, must visit every savings and state bank each year, or oftener if expedient, and "shall have free access to vaults, books and papers, and shall thoroughly inspect and examine all the affairs of each of said corporations, and make such inquiries as may be necessary to ascertain its condition and ability to fulfil all its engagements and whether it has complied with the provisions of the law." The laws whose enforcement is thus enjoined provide for a division of the risks of investments, name the classes of securities that may be taken and relate to the treasurer's bond and other precautions to preserve the solvency of the banks. The commissioners are to notify the attorney-general to bring suit for injunction or other order of the court in case of violation of law. A bank becomes insolvent now and then through embezzlement or mismanagement; for the frailties of human nature will manifest themselves under any political or industrial system; but, in that event, the liquidation is so managed that depositors usually get all or nearly all of their deposits. The savings-bank commissioners make annual return of their actions and of the

financial condition of every savings bank, institution for savings, loan and trust company and co-operative bank.

A board of insurance commissioners was established in 1855, but there is now only one commissioner. As often as once in three years he is required personally or by his deputy or chief clerk to visit each domestic insurance company and thoroughly inspect its affairs, especially as to its financial condition and as to whether it has complied with the laws. He may also make an examination whenever he deems it prudent or upon the request of five policy-holders, creditors or other persons pecuniarily interested in a company's affairs; and he is authorized to investigate the affairs of foreign companies doing business in the state. No new insurance company or fraternal beneficiary organization can do business until it has satisfied the commissioner that it has complied with the law and is financially able to assume risks. When he finds that any domestic insurance company is insolvent or has exceeded its powers or has failed to comply with any provision of the law, or that its condition is such as to render its further proceedings hazardous to the public or to its policy-holders, it is his duty to apply to a justice of the supreme court for an injunction restraining the company from further proceeding with its business. For any of these reasons, moreover, the commissioner may forbid a foreign insurance company to do business in the state. No insurance of any kind can be written except under the Insurance Act, which provides many safeguards for the interests of the policy-holders against the fraud and insolvency of the companies. The famous non-forfeiture law, enacted in 1861 and made more definite in 1880, annihilated one of the greatest abuses of the business. If a company's capital is impaired, the commissioner forbids it to issue more policies until its funds equal its liabilities. He reports annually what he has done and makes public the financial condition of every domestic company and "such other information and comments in relation to insurance and the public interests therein as he deems fit to communicate."

The Massachusetts insurance commissioners have waged an unrelenting warfare against the frauds of insurance companies,

and the result is that to-day this state is unrivalled in the financial soundness of its companies and in the justice and fairness with which the policy-holder is treated. Whether his insurance is life, accident, fire, marine, fraternal or assessment, he may feel secure in all his interests. Assessment insurance companies began business a few years ago without financial responsibility, and they were likely to collapse at any moment without redress for policy-holders. One company in Massachusetts divided large dividends with the excesses of assessments, and another dissolved without the assent of its benefit members. The insurance commissioner was instrumental in having a law enacted putting this kind of insurance under his surveillance, surrounded by the proper financial safeguards. Referring to his examination of a foreign insurance company, Commissioner Tarbox said in his report for 1886 :

In the examination it appeared that it has effected illegal re-insurances and made false statements to the department, and the conduct of its affairs had not been in accordance with sound business methods. Similar delinquencies were disclosed in the affairs of [another company]. The penalties for these offences were enforced against these companies upon proceedings instituted by the attorney-general and the sum of \$2,000 recovered to the use of the Commonwealth.

Commissioner Merrill, in 1887, reported that

an attempt was made to galvanize into life the defunct fraudulent ——— Benefit Association ; a new name was selected, but the old managers who fostered the project could not so much as keep fraud and falsehood out of the preliminary papers submitted to the department, and the scheme came to grief without securing authority to prey upon the public.

A foreign fidelity insurance company was fined in 1886 for making a false statement, and there were several successful prosecutions of foreign companies in 1887, in which year, also, the public was warned against a certain fraudulent Indiana life insurance company. If more were needed, many references to reports might be given to show how thorough an oversight is exercised by the insurance commissioner over the business

of the companies, and how effective it is in securing financial responsibility and in preventing fraud.

The successful mission of the board of railroad commissioners, established in 1869, has been one of the great and important facts of government. This board had for examples the achievements of the savings-bank and insurance commissioners, but it had a vastly greater undertaking than theirs. The general and to some extent the special character of its duties are outlined by the law :

The commissioners shall keep themselves informed as to the condition of railroads and railways and the manner in which they are operated with reference to the security and accommodation of the public, and as to the compliance of the several corporations with their charters and the laws of the Commonwealth.

The board, whenever it deems that repairs are necessary upon any railroad, or that an addition to its rolling stock or an addition to or change of its stations or station houses or a change in its rates of fares for transporting freight or passengers or in the mode of operating its road and conducting its business is reasonable and expedient in order to promote the security, convenience and accommodation of the public, shall in writing inform the corporation of the improvements and changes which it considers to be proper.

In case of a violation of law by a railroad corporation, the attorney-general is to be notified to bring suit. Upon complaint of the selectmen, the mayor and aldermen or twenty legal voters of any town or city, the railroad commissioners are to examine the condition and operation of any railroad partly located in said town or city and to recommend any action they deem necessary. The annual report of the commissioners is to include

such statements, facts and explanations as will disclose the actual working of the system of railroad transportation in its bearing upon the business and prosperity of the Commonwealth, and such suggestions as to its general railroad policy or part thereof, or the condition, affairs or conduct of any railroad corporation, as may seem to it appropriate.

Only the more important of the laws whose enforcement is imposed upon the commissioners can be mentioned here :

No railroad, or branch or extension of a railroad, shall be opened for public use until the board, after an examination, certifies that all the laws relating to its construction have been complied with and that it appears to be in a safe condition for operation.

No railroad company shall, in its charges for the transportation of freight or in doing its freight business, make or give any undue or unreasonable preference or advantage to or in favor of any person, firm or corporation, nor subject any person, firm or corporation to any undue or unreasonable prejudice or disadvantage.

Every railroad corporation shall give to all persons or companies reasonable and equal terms, facilities and accommodations for the transportation of themselves, their agents and servants and of any merchandise and other property upon its railroad, and for the use of its depot and other buildings and grounds ; and at any point where its railroad connects with another railroad, reasonable and equal terms and facilities of exchange.

The capital stock of a railroad company can be increased only with the consent of the railroad commissioners or by special legislative act, and there is a strict law against stock watering. There are provisions regarding brakes and brakemen, tools for use in case of accident, non-explosive fluid for lighting cars and mufflers to accompany vacuum brakes and safety valves on engines. Employees must be examined for color-blindness, checks must be given for baggage and receipts for freight, and "reasonable accommodations for the convenience and safety of passengers" must be supplied. The fares, tolls, charges and regulations of a railroad company are at all times subject to revision and alteration by the General Court or by such officers or persons as it may appoint for the purpose. No highway or railroad is allowed to cross a railroad at grade except with the consent of the commissioners and under regulations prescribed by them. Railroad companies must forward merchandise as directed and not by a different route. Milk cans must be carried as advantageously for the small shipper as for the large one, — a rule designed to prevent the practice which prevailed at one time of forcing farmers to ship through a middleman who hired whole cars. Connecting railroad companies must draw each other's passengers and freights. The

famous short-haul law, enacted in 1874, has been fully enforced without entailing evil, though it may not be adapted to the through traffic of a continent. The railroad commissioners are by law made arbitrators in the cases of some questions arising between railroad companies in their relations with one another. They investigate and publicly report the causes of every accident deserving attention, and advise a company which is at fault to change the practice or condition that led to the accident. Explosives can be transported only under the regulations of the commissioners. Street railway companies are under their jurisdiction, and are also under the regulative power of local authorities in regard to speed of cars, use of tracks and removal of ice and snow. The commissioners have full power to revise and regulate the fares of street railways, but not the passenger and freight rates of steam railroads, except charges for transporting milk; beyond this their power in regard to charges is only advisory.

The variety and minute detail of the commissioners' jurisdiction may be well seen from the following results of their activity: companies have been compelled to grant facilities for carrying on the express business to petitioners to whom such facilities had previously been denied, and to accord terms reasonable and equal to those given to competitors; to give better accommodation in the checking of baggage; to give lower rates and higher speed in the transportation of fish from Cape Cod to Boston; to abate the public nuisance of whistling at certain crossings; to render dangerous crossings safe; to change the location of a station in accordance with the wishes of the public and against the wishes of the company, and to modify the construction of stations for greater convenience; to run workingmen's trains; to observe legal precautions at the crossing of tracks; and to build stations and stop trains at summer resorts. Furthermore, such acts as the following appear in the record of the commission's work: a project of street railway officers to build a road on borrowed capital and to get the road into their own hands without putting in any of their own money, was reported to the attorney general, who prevented its success; a

sea-beach railroad company, which had discontinued all trains in the winter, was compelled to run one train daily ; a milk train was stopped every day at an obscure station ; an express train was stopped at a station previously passed by ; a discontinued train was restored ; a new accommodation train to Boston was run ; coal freights were reduced 15 per cent ; the operation of a railroad was stopped because its construction was illegal ; the speed of an express train was slackened when running by a station where another train was taking on passengers ; a through car from a certain town to Boston was added to a train ; the discontinuance of a station was prevented, as was also the execution of a threat to stop the issue of half-rate tickets to school children ; air brakes were substituted for hand brakes ; discrimination in freight rates and violation of the short-haul law were stopped ; and defects in track and road-bed, as reported by a civil engineer employed as inspector, were remedied.

The administration of the Railroad Act has accustomed the companies to obedience to a law or to a decision given by the commissioners, without the further intervention of the board. For instance, a law of 1885 gave the commissioners, upon petition of municipal authorities, power to regulate or forbid the use of level crossings for the purpose of making up or disconnecting freight trains. At once either these obstructions to travel wholly ceased or railroad managers began improvements which remedied the evil. If there is one place in the state where a highway crossing is unreasonably used by freight trains to public annoyance, it is because there is not local public spirit enough to produce a complaint. A company rarely refuses to comply with a recommendation of the commissioners. In case of such a refusal the legislature is likely to interpose and by special law to compel obedience. One instance of this kind was the refusal of a company to reduce freight rates, and another a refusal to provide better access to a station. The decisions of the commissioners are by no means invariably in favor of complainants and petitions are in numerous cases denied. Indeed, the board is the best protection that the railroad companies have against hasty and unwise action by the legislature.

The public interests under the general law of incorporation are protected by the commissioner of corporations, whose office was established in 1870. The organization of new corporations must by law follow a certain public procedure with safeguards against fraud and financial irresponsibility, and the incorporation is not complete until the commissioner of corporations is satisfied that the law has been complied with. No corporation organized under general or special law can begin the transaction of business until the whole amount of its capital stock has been paid in, in cash or its equivalent, and a sworn certificate of the fact filed with the Secretary of the Commonwealth; and every increase of stock is equally well protected against watering.

The gas business was placed under the supervision of commissioners in 1885. In 1861 the office of inspector of gas meters and illuminating gas was established, and his duty was and still is to inspect, prove and ascertain the accuracy of all gas meters and to see that the purity and illuminating power of all gas used for lighting reach the statutory standard. The gas of every company is to be inspected twice a year and once more for every 6,000,000 feet of gas sold. No meters must be used that do not bear the seal of the inspector. The gas and electric-light commissioners have this officer at their service. To these commissioners is assigned "the general supervision of all corporations engaged in the manufacture and sale of gas for lighting or for fuel" and of all electric-lighting companies, and they are required to "make all necessary examinations and inquiries to keep themselves informed as to the compliance of the several corporations with the provisions of the law"; in case of non-compliance, the commissioners notify the attorney-general. Upon the complaint of the mayor of a city or of the selectmen of a town in which a gas or electric-lighting company is situated, or of twenty customers of such company, the commissioners are to give a public hearing to the petitioners and the company; after such hearing, they may order any reduction they deem just and proper in the price of gas or electric lights, or any improvement in the quality thereof, and they must pass such

orders and take such action as are necessary thereto. These commissioners make annual reports of their proceedings, including information about the price of gas and its reduction or increase and many statistics. Water gas may be manufactured and sold with their permission. In the prosecution of their duty, the commissioners have procured the fining of a company for selling impure gas, have lowered the price of a company's gas and have reported a company for issuing a stock dividend. The local authorities of every municipality also have power to regulate gas and electric-lighting companies so far as the acts of such corporations "may in any manner affect the health, safety, convenience or property of the inhabitants of such place."

The express, the telegraph and the telephone business are not yet under the supervision of commissioners, but selectmen and mayors and aldermen may establish reasonable regulations in reference to the erection and maintenance of all telegraph and telephone lines within their respective municipalities; and express, telegraph and telephone companies are forbidden by law to discriminate among customers in their charges and accommodations.

The board of arbitration and conciliation, established in 1886, has power to bind by its decision for a limited length of time, not exceeding six months, employers and their employees who unite in submitting their differences to it for arbitration. Upon the application of either party or upon its own motion, the board may publicly investigate all controversies between employers and employees, and may attempt to conciliate the parties. This board is yet too young to have made any great record for itself, but its mission so far has been generally successful and its recommendations have been substantially complied with in cases submitted to it by both parties. In the performance of its duties it has given advice in favor of the restoration of men to work who were discharged on account of being union men; against the reduction of the wages of coal heavers; against the discharge of bricklayers because they were not union men; in favor of shortening the hours of work of some of the paper-mill operatives. It has established labor price lists

in the boot, shoe and granite-cutting industries, and has prescribed rules of work and decided questions regarding the speed of machinery and the character of the stock used in manufacture. An annual report of its doings is required of the board; that for 1887 says:

The board has been frequently consulted, as well by employers as by workingmen and workingwomen, in regard to differences which did not call for an extended inquiry and were quietly adjusted without publicity and without any formal hearing or adjudication by the board.

Yet another agency for regulating corporations is found in the inspectors of factories and public buildings, a body created in 1878 and consisting of twenty-three members drawn from the district police. The duties of the inspectors are increased almost every year and, among other things, now include the enforcement of the factory laws and the laws regarding the employment of women and minors. No woman or minor under 18 years of age may be employed for more than ten hours a day in any manufacturing or mechanical establishment, and time for meals must be allowed them as specified. Seats must be provided for females, who must be allowed to sit down when their work permits. No child under 13 years of age may be employed in any factory, workshop or mercantile establishment; a child between 13 and 14 years of age may be so employed only upon the permissive certificate of the local school committee that he is 13 years of age and has attended school for twenty weeks during the preceding year. Children under 14 years of age must not be allowed to clean machinery when it is in motion. No building designed to be used above the second story in whole or in part as a factory, workshop or mercantile or other such establishment may be built until its plan has been seen and approved by an inspector, who will require fire escapes, ample facilities for egress and certain precautions against fire. These latter requirements apply also to all such buildings erected before the enactment of the law. The statute book contains a wide range of provisions for the health and safety of factory employees. The inspectors are to see that these laws

are observed and, upon the request of the municipal authorities, they must inspect any building used for industrial purposes.

The character and workings of the law may be seen from the following orders actually given by inspectors: Safety clutch to be provided for elevator and elevator openings to be guarded; railings at stairways to be securely fastened; means for extinguishing fires, new hoisting cable and additional egress to be provided; certificates of children employed to be obtained and kept on file; guards for belts, pulleys, machinery, shafts and fly wheel of engine; doors to be kept unlocked during working hours; fire escape to be repaired; better access to fire escape; seats to be provided for women; doors to swing outwardly; and so on. By secret complaint to the inspector of his district a workingman may secure the benefit of these laws without inviting the antagonism of his employer. In 1886, 1,083 factories and manufacturing or mercantile establishments and 282 public buildings and tenements were inspected and 488 orders were issued, which were generally complied with.

Finally, in 1889 a commissioner of foreign mortgage corporations was created, with powers and duties similar to those of the savings-bank commissioners.

III.

Of the success of the regulative state agencies which we have been considering, their own reports contain fair statements. From the railroad commissioners we have such paragraphs as the following:

Grievances, when brought to the attention of railroad managers, have been so promptly redressed that any publication of the fact that they had existed would be an act of injustice. Matters which would once have been the subject of long continued newspaper discussion, followed by protracted and heated debate at the state house, have been quietly arranged as soon as the parties have been brought face to face. Questions which promised costly litigation have been settled by conference, or even by an exchange of notes.¹

No law in the state is more thoroughly enforced than [the short-haul law]. Indeed, it would be more correct to say that, instead of being

¹ Report for 1882.

enforced at all, it is universally acquiesced in and obeyed. It is true that in 1882 it was shown that a railroad company in this state was acting in violation of this law. But upon receiving the opinion of this board that it was so offending, the corporation desisted from the practice and lowered its rates to conform to the statute requirements. [This law] has remedied a great evil and a great injustice ; it has helped to save small industries and small places from being crushed out of existence ; it has checked the tendency to consolidation which would build up one place or a few places at the cost of local enterprise.¹

It might with confidence be claimed that there is to-day no portion of the industrial machinery of Massachusetts which, upon the whole, is conducted under a stronger sense of responsibility to the public or with so great freedom from abuses in the conduct of its business or with so anxious a desire to give reasonable satisfaction, as the railroad system of the state. In all these respects the improvement in tone which has taken place within the last few years is most noticeable and the result is apparent, even though as yet not generally realized. There has in consequence been a rapid decrease of complaints against the corporations and a no less rapid subsidence of that restless feeling of hostility which was so marked a feature in the discussions of a few years back.²

From the insurance commissioner we have the following paragraphs, taken from his reports for 1883, 1885 and 1887 respectively :

While elsewhere serious scandals have disgraced the business management and impaired confidence in the [life insurance companies] and numerous unworthy organizations have abused and betrayed the trust reposed in them, no company organized by the authority and subject to the laws of Massachusetts has defaulted in any of its obligations.

Since Massachusetts inaugurated its bureau of insurance thirty years ago, a great improvement has been wrought in the condition of our insurance interests, in the accomplishment whereof the bureau has borne an influential part. It has prompted wholesome laws and methods and the honorable enterprises of legitimate insurance. What it has helped to establish it is still needed to conserve and advance.

There is at the present time a general disposition to cordially comply with legal provisions in the transactions of business within the Commonwealth.

Insurance Commissioner Tarbox, in his report for 1885, quotes a distinguished underwriter as saying :

¹ Report for 1884.

² Report for 1878.

The fact is that for many years these [insurance] departments have stood between the companies and unwise legislators. The writer has not forgotten that the country was full of worthless companies before the departments became general, and if the latter could be abolished, the former would be as numerous as the rascals are who would like to make money by such institutions.

The board of arbitration, in its report for 1887, uses the following language :

Experience has demonstrated the fact that, if an untenable position has been assumed for the time being, it can in no way be abandoned with so little disturbance of self-respect as by conforming to the recommendations of an impartial board, acting in the name of the state. . . . In all the cases regularly submitted by both parties, the recommendations of the board have been accepted and acted upon without material variation.

The savings-bank commissioners reported in 1885: "The system of savings banks in this state has proved itself as nearly safe as any financial system within the range of monetary experience." The factory and public building inspectors reported in 1886 an improved observance of the child-labor law and the elevator law and that accidents had diminished; they reported that they had little or no trouble in enforcing the laws.

The ascertainment and publication of facts have been the means by which Massachusetts has solved the problem of regulating corporations and monopolies. The accounts of steam and street railroads, gas and electric-lighting companies, savings and co-operative banks and foreign mortgage corporations must be kept in the manner prescribed by the various commissioners, and the accounts of all these corporations and of all kinds of insurance companies must be open to the examination of the commissioners, who are to perform this duty within certain limits of time and who are empowered to summon witnesses, including the officers of the corporations under examination. An annual report to some specified public officer must be made by every business corporation in the state; this must be sworn to, and in the case of each of those just mentioned must contain many facts of detail. This reveals to the public eye the true

financial condition of all business corporations and the profits made by those specified. Upon complaint of certain interested persons, the financial condition of any railroad company, savings bank or foreign mortgage corporation must be examined by the proper commissioners, and the latter have access to the lists of stockholders. Literary, benevolent, charitable and scientific institutions have made annual returns of their property, income and expenditures since 1882. Water companies and public water commissioners must make triennial reports about their business, capitalization, charges and property, but not about their profits. Massachusetts corporations engaged in manufacturing and mechanical industries, mining, quarrying, *etc.*, make annual returns to state officers, and most of them have done so since 1865. The law now calls for a sworn statement of

the amount of capital stock as it then stands fixed by said corporation the amount then paid up, the name of each shareholder and the number of shares standing in his name, and the assets and liabilities of said corporation in such form and with such detail as the commissioner of corporations shall require or approve.

The details required include the classes of assets and liabilities but do not disclose profits. The facts contained in the reports of all corporations are freely open to the public and all of them are printed for general distribution. The following paragraphs are quoted from the reports of the railroad commissioners for 1875 and 1878 respectively:

The last vestige of the old idea that the accounts of railroad corporations are matters of private concernment only and as such can best be managed in secret, must be gotten rid of. To bring about this result, a bill was prepared, a year ago, and submitted by this board to the joint legislative committee on railways. It was meant to be radical in its character, having been prepared in the full light of the many and notorious scandals of the last ten years, and with the financial revelations which followed the crisis of 1873 still fresh in mind. It subjected the books of the railroad corporations to a constant and regular public supervision, with a view to securing accuracy and uniformity in the methods of keeping them.

The management of [railroad] lines cannot in the future continue to be a mere hotbed of abuses. That they should be managed in the full view of the public seems, therefore, a necessary condition of their continued private ownership. In Massachusetts, at least, the proposed change has now actually been effected. The books, papers and accounts of the railroad corporations are as open to public scrutiny as those of the state or city governments ; and yet not a single one of the evils so frantically predicted has ensued. On the contrary, the system works perfectly well.

But the services of these state agencies do not end here. They are also special and expert advisers to the legislature upon questions within the scope of their respective duties. Some of the best legislation that was ever put into a statute book is mainly the work of these Massachusetts boards. The Railroad Act was prepared by the railroad commissioners, the Savings-Bank Act by the savings-bank commissioners and the Insurance Act by the insurance commissioner, at the special request of the legislature. No legislative body, by any amount of committee work, can frame a reasonable code of business regulation containing many details. Insurance Commissioner Tarbox, in his report for 1884, tells us into what confusion the insurance law had fallen :

The insurance law needs comprehensive revision. It has all the vices of patchwork legislation unskillfully done by careless craftsmen. Parts of it are antiquated and obsolete and serve only to encumber and confuse. Some of its provisions are hopelessly conflicting and irreconcilable, while others are so obscure in terms and relations that only a legal expert can interpret their sense.

In his report for 1885 the commissioner continues :

Our average lawmaker cannot, or will not, qualify himself sufficiently by investigation and study of the particular matter to act with instructed judgment on subjects of a special character like insurance, and unless some impartial source of information, such as an insurance department ought to be, is available, his intelligence is liable to betrayal by vulgar prejudice or designing art into inconsiderate action.

These remarks are true of many other subjects than insurance, and the Massachusetts legislature every year shows its

dependence upon its special advisers. To the railroad commissioners have been referred questions of proposed legislation regarding safety switches, color-blindness, freight charges on coal brought into one of the counties, limitation of the number of passengers in street cars, grade crossings, the whistling nuisance, women and children in smoking cars, signals, automatic couplers, the charges of a bridge company, the heating and lighting of cars, the fencing of railroads, protection of brakemen and trackmen, change of location of a railroad in a city, and many other matters. The bureau of statistics of labor has been called upon to report concerning employers' liability for injuries received by employees in their work, co-operative distribution, drunkenness, industrial conciliation and arbitration, convict labor, *etc.* The board of education has reported regarding industrial drawing, a half-mill fund for the support of public schools, evening schools, the best method of supervision, and so on. The board of health has made reports on oleomargarine, the sale and use of opium, the pollution of the sources of water supply, a general system of sewerage for the relief of a certain valley, *etc.* Reports have come from the board of lunacy and charity regarding proposed institutions for the care and reformation of drunkards; from the insurance commissioner on assessment insurance; from the savings-bank commissioners on the investments of savings banks; from the commissioners of prisons on methods of inflicting the death penalty; from the supervisors of statistics on the uniformity of public records. Besides making written reports to the legislature, the various state boards and agencies have repeatedly testified before legislative committees as to matters within their experience.

The general result is that the various state agencies of Massachusetts have become an effective power in a current of legislation which is producing laws that are most suitable to true legislative ends, most consistent with each other and most fairly conducive to the rights and welfare of the whole people. These agencies are powerful champions of aggrieved citizens before the legislature.

IV.

Massachusetts could not have achieved the marked success that it has in the regulation of corporations and industry if the people had not been quick to resent offence and sensitive to public opinion. Probably the democratic government that the towns have always enjoyed is largely responsible for this. Some rigid laws announcing general principles were first necessary; but the chief portion of the effective work has been done by the commissions, depending upon full investigation and publicity of facts. It is interesting to read what some of the commissioners say regarding this kind of government. The three following paragraphs are, respectively in order, from the reports of the railroad commissioners for the years 1873, 1875 and 1878:

When the board was originally organized, great doubts were entertained whether such a method of procedure would prove effective or, indeed, of any real value. A larger experience, however, rather tends to show that, in the peculiar existing condition of the relations between the community and the corporations, this merely recommendatory power is, perhaps, best of all adapted to accomplishing many results. Theoretically, a mere power to hear, suggest and recommend amounts to nothing; practically, it may be made to accomplish a great deal, and what it does accomplish it accomplishes in the best way and with the least degree of antagonism. To exercise an arbitrary power is a very easy and short way of disposing of difficulties; but such a course inevitably leads to bitter controversies and much hard feeling. Discussion, argument and suggestion can, perhaps, in the end be made to effect as much with far less friction. Certainly the present commissioners have no disposition to ask for any increase of power.

The commissioners cannot too frequently or too forcibly remind both the legislature and the public that their chief power rests in the public feeling which they may at any time represent. Railroad corporations, as a rule, care but little for abstract principles, nor do they alter their methods of procedure in response to every suggestion, even from official quarters; they are, on the other hand, very sensitive to public opinion and they invariably yield to it when they feel that it is concentrated and persistent. To facilitate its concentration and to impart consistency to it must always remain a very important and perhaps most useful function of this board.

The board maintained that every desired result or needed reform could be secured by simply developing in the public mind the idea of corporate responsibility and supplying the necessary machinery to act directly upon it. To bring this about, it was necessary to force the corporate proceedings into the full light of publicity and to compel those responsible for railroad management, whenever an abuse was alleged, to submit to investigation and to try to show that the abuse did not exist. Failing to do this, their only alternative was to discontinue its practice, or to persist in it in open defiance of public opinion.

The insurance commissioner has an equally intelligent understanding of the sources of the success of his department. The first quoted paragraph that follows is from his report for 1886, the others from that for 1885 :

The plea that the corporations, if left to themselves, will faithfully, perform their trusts and do full justice to their policy-holders, and that therefore there is no need for legal protection to either, is not sustained by reason or facts.

The tendency, I fear, is toward a too free resort to the sword of legislation for the redress of faults in commercial intercourse. These are often more justly reformed by the process of the natural laws of trade and the force of correct public opinion than by the compulsion and arbitrary treatment of peremptory statutes. . . . Insurance departments, if faithful to their trusts, subservient neither to unwarranted popular prejudices nor to the ambitious self-interests of the companies, may do much to enlighten popular opinion upon [the principles and methods of insurance and the conditions of its successful operation] and to maintain just relations between the companies and public, to the great advantage of both.

The experience of Massachusetts demonstrates that it has found the true field of state action in regard to corporations and industry. Not that perfection has yet been attained within the whole field ; but it is apparent that, with age and extension, the policy that has now become well developed is capable of finishing the work that yet lies before it. Indeed, more has been done than remains to be done, and every further step will be looked upon as a continuance of a well settled policy that cannot now be called in question, after all the successes that it has had. When, five years ago, the entire business of the

manufacture and sale of gas and of electric lights was placed under the control of commissioners and of the strict and radical laws which stand back of them, the proceeding was accepted by the public as a matter of course and by the companies without obstruction. It may not be a rash prophecy that the time will come when the publicity of accounts now required of the railroads, showing even their profits, will be required of every corporation existing by authority of Massachusetts. Already, railroads, gas, insurance and electric-lighting companies, and savings and co-operative banks have to report the items of their receipts and expenses, as well as of their assets and liabilities; the extension of this rule to all corporations existing for profit is all that is necessary to reduce them to the full control of the people, by whose permission alone they exist.

There are good reasons, therefore, why Massachusetts has no sympathy with the proposition that municipalities shall own their own gas works. The problem has already been solved by the suppression of that individualism only that is harmful to others. The great stock of equal liberty remains substantially unviolated. The monopoly of the gas business is defended and regulated, and there is no reasonable complaint against a gas company, from either the general public or the consumer, which is not promptly remedied without expense to the complainant. The railroad business, moreover, no longer worries Massachusetts. One may travel or receive freight over every railroad in the state and have less reason to complain against the companies than he may have in a month or a week against his grocer. The anxiety that remains is only that the system of commissions may not soon enough be extended to all corporations and especially to trade combinations. These combinations, we have reason to believe, may be fearlessly tolerated when they are subjected to legal limitation and are placed under the oversight of a board of commissioners, with power to enforce the laws, to investigate their doings, and to make all their contracts as public as the doings and contracts of railroad and gas companies.

The work of Massachusetts in this direction is in no sense a palliative, as the socialist is fond of calling every remedial attack on the existing system. A palliative counteracts certain effects without removing the cause; but Massachusetts destroys at the outset the cause of the monopoly evil. This avoids at one extreme the tendency toward anarchism, and at the other every taint of social industrialism. There is no general surrender of the liberty of the citizen to the state, except so far as it follows from the state's maintenance of some of the natural monopolies; and this more than pays for the slight sacrifice. The difference between state supervision by administrative officers and nationalization is not vast when we think of the people in their relationship to the corporations; but the difference is radical and all important when we think of the people in their relationship to the state. No one who has lived under these institutions of Massachusetts and understands their nature and administration need at all sympathize with Professor James's plea for municipal ownership of gas works, or with the incipient socialism of Professor Ely and his school. The people of Massachusetts have cause to regard these plans as unnecessary, and as unwarrantable restrictions of the citizens' liberty by the state. It is not merely a question of whether the state can operate a branch of industry with more economy than private individuals. If this is all that there is to the question, it is distribution, instead of transportation and the natural monopolies of production, that first needs attention, and the state should sell milk, in order that three or four milk peddlers might be stopped from peddling milk on one city block. If this were nothing but a question of mathematical economics, there would be no room for a protest against the delivery of the people into the power of an industrial despot or a bureaucratic cuttlefish. We are not obliged to choose between social industrialism and unrestrained private monopoly.

The oversight of corporations and natural monopolies by Massachusetts brings with it a good not generally thought of. Though a person is allowed to have justice from a court within

its criminal jurisdiction without cost to himself, he is denied free justice within its civil jurisdiction. Civil justice is not obtainable from the courts by the rich and the poor with equal freedom; the court guarantees justice only to those who can pay for it. Since the boards of commissioners have come into being, they have, by their action and by the menace of their existence, dispensed a vast amount of justice without expense to those who have received it. As the railroad commissioners, in their report for 1884, said of the residents of Massachusetts and the work of the board :

The humblest of her people may find, without delay and without cost, redress against the most powerful class of her corporations. . . .

In such matters an appeal to the board takes the place of a long-continued suit against a powerful corporation, to be followed through all the courts and to be contested on technical points by skilled counsel, resulting in great expense and perhaps in a nominal fine. The cheap and speedy remedy of a hearing by the board is better for both parties and relieves the complainants from the sense of wrong which is often more weighty than the wrong itself.

In this work of the state of Massachusetts, an aggrieved person need pay no burdensome fees ; he is subjected to no long delays ; he cannot lose his case by an error in practice, or by the turning of a lawyer's technicality.

The general conclusion warranted, then, is that, by extending the sphere of the state in the way of regulation, inspection and publication of facts, and in maintaining at least the natural monopolies, the evils arising from corporations and from the private ownership of the means of production and transportation may be prevented by discretionary administrative officers. The problem of these evils, to which many writers are giving extreme or visionary answers, has been substantially solved by the political experience of Massachusetts. In response to the alarm felt at the private ownership of railroads or gas works, and the fault found with their uneconomic competition, the people of Massachusetts have made legal monopolies of gas and railroad companies and, so far as a state's jurisdiction goes, have disposed of all reasonable public concern about their manage-

ment. The great fear of the natural monopolies is entirely dispelled in this state, though the monopoly feature is protected. It only remains for the state to pursue what is now its well established policy, to include within it the small remnant of the natural monopolies not now fully included, and to extend this policy to all corporations and trade combinations. When that shall be done, the trust, as is now the case with the railroad and the gas company, may have a very harmless appearance. Those who advocate the remedy of state ownership may be compared to the man who protects himself against a boy with a snowball by killing the boy. The social industrialism is no more necessary than the homicide is. There are two parties who advance reasons for state ownership. The average untrained thinker aims only to do away with the excesses of private and monopolistic power; the economist is thinking mainly of the waste of capital, the inflation of capital stock and the irresponsible private management. Massachusetts returns answer to both of these parties. The economist has not yet proved that a public monopoly can be operated more economically than a private monopoly that is protected and regulated by the state. Professor Hadley, in the *POLITICAL SCIENCE QUARTERLY* for December, 1888, goes farther and says that there is no economic advantage as against private monopolies that are not so protected and regulated.

A people among whom public opinion shall have the force of law without legislative enactment or judicial authority has been dreamed of as possessing an ideal state; and yet Massachusetts has entered into the domain of this kind of government and is enjoying an appreciable amount of it. Socialism and anarchy may here find their compromise. When we examine the character of the present government of this state, we find that the principles of the common law are substantially all formulated, and that the chief business of the courts is the application of these principles to cases and the holding of negligent and reluctant persons to their legal duties and responsibilities by menacing them with the courts' power. As to the statute law, the criminal portion is about complete, as it ought to be after

creating nearly 1,000 crimes ; the civil portion is continuing to receive such additions as the evolution of conditions demands, and, no doubt, more than are needed, while various departments of laws are undergoing revision and codification to be placed in the charge of administrative officers. It is desired to diminish the activity of the legislature, not that the power of the state may be limited, as a learned writer infers, but that it may be diverted from legislation into administration.

The other states of the Union are following the lead of Massachusetts in this course, though most of them must lag far behind. It is not easy for a corporation-ridden state, like Pennsylvania, to enter this field of action, nor for such a state as South Carolina, half of whose population ten years of age and over is illiterate. But, after all, the trend of the civilization of the United States is toward the conditions which make possible the kind of government that is our theme. It is required that a large body of the people of the state shall be intelligent and educated ; that they shall be devoted to reading and discussion ; that associated efforts shall be habitual and frequent ; that population shall be considerably dense ; and that resentment against wrong and whatever limits the common welfare shall be quick and energetic. Hence it is that in Massachusetts wealthy corporations are the servants not the masters of the people, and that industry is moulded to fit the popular welfare. Competing gas works cannot be set up nor can a railroad be paralleled. The total property and assets of the New York and New England Railroad Company amount to nearly \$40,000,000 ; but for a grievance against that company that falls within the jurisdiction of the railroad commissioners, there is no resident of Massachusetts too humble to get redress, if he can command four cents with which to pay for the paper and postage of a letter.

GEORGE K. HOLMES.